

**Zoning Board of Appeals
Minutes
February 21, 2006**

Members Present

Maureen Kangas-Vice Chairman
Ronald Critelli
Lynne Raver
Marc Breimer-Alternate

Members Absent

Barry Silverstein-Chairman
MaryAnn Leenig
April Callahan-Alternate

Other Officials Present

Janis Gomez Anderson, Esq. – ZBA Attorney
Edward Peters – Deputy Building Inspector, Interim Zoning Administrator

Notice of Appeal Hearing has been published in the Poughkeepsie Journal, The Southern Dutchess News and The Beacon Free Press.

Notified of the variance requests were the Town Board, Town Planning Board, Dutchess County Department of Planning, The Interim Zoning Administrator and the surrounding property owners.

The meeting of the Zoning Board of Appeals was called to order at 7:03 pm by the Vice-Chairman. She made announcements regarding the no smoking policy and the emergency exits and fire procedures.

Vice-Chairman Kangas announced that Alternate Member Marc Breimer was on the Board for this meeting with full voting rights.

Vice-Chairman Kangas called for comments or corrections to the minutes of the November 2005 meeting. Hearing none, she called for a motion to accept the minutes as written.

Lynne Raver made the motion to accept the minutes as written.
Ronald Critelli seconded.

Motion Carried

Maureen Kangas – Aye
Ronald Critelli – Aye
Lynne Raver – Aye
Marc Breimer – Aye

Votes:

ZB05-019, Charles Lyons, variance for a covered front porch
Ronald Critelli made the motion to Grant the variance request
Marc Breimer seconded

Motion Carried

Maureen Kangas – Aye
Ronald Critelli – Aye
Lynne Raver – Aye
Marc Breimer – Aye

ZB06-001, Kevin Moen, variance for an addition
Ronald Critelli made the motion to Grant the variance request
Lynne Raver seconded
Motion Carried

Maureen Kangas – Aye
Ronald Critelli – Aye
Lynne Raver – Aye
Marc Breimer – Aye

ZB06-002, Mark Medley, variance for a detached garage
Vice-Chairman Kangas advised that Janis Anderson would present to the Board prior to this vote.

Ms. Anderson reminded the Board that at the January meeting, the Hearing had been closed, but the possibility of a lot line adjustment had been discussed with the Applicant. Ms. Anderson did the research and advised the Applicant that the Town of Fishkill does not have a provision for lot line readjustments. They would have to re-subdivide. This would be more costly. The Applicants decided to continue with the variance. It is not known if a re-subdivision would be feasible because it would entail the hiring of an engineer or surveyor to make the determination on whether or not the lot could be re-subdivided in such a way to avoid the variance.

Vice-Chairman Kangas called for a motion regarding the variance for Mark Medley
Ronald Critelli made the motion to Grant the variance request

Lynne Raver seconded

Motion Carried

Maureen Kangas – Aye

Ronald Critelli – Aye

Lynne Raver – Aye

Marc Breimer – Aye

Old Business

Continued Public Hearing for:

Grid Number: 5953-00-785450 Address: Melzingah Dam Rd

Application Number: ZB05-010, submitted by David Gianna and Denise Zottola, requesting the following variances. 1) front yard setback of 42.9ft where 75ft is required, 2) side yard setback of 37.9ft where 50ft is required, 3) minimum lot size of 1.52 acres where 4 acres is the minimum and 4) access to the property from other than the a main road.

Said requests are a violation of Chapters 150-33.A. and 150.26.A. of the Code of the Town of Fishkill.

Vice-Chairman Kangas announced that the ZBA received the report from the Town Engineer. She advised that the Applicant requested an adjournment until March 21 to respond to the report.

Vice-Chairman Kangas called for a motion to Adjourn this Public Hearing

Marc Breimer made the motion to Adjourn this Public Hearing

Ronald Critelli seconded

Motion Carried

Maureen Kangas – Aye

Ronald Critelli – Aye

Lynne Raver – Aye

Marc Breimer – Aye

Grid Number: 6356-01-336595 Address: 115 Mountainview Rd
Application Number ZB05-020, submitted by Antonio Scanga, requesting a 31.7ft variance creating an 18.3ft rear yard setback where 50ft is the minimum allowed and a variance from Chapter 150.21 requirement that no more than 10% of a lot can be underwater. Said requests are a violation of Chapters 150-33.A. and 150.21 of the Code of the Town of Fishkill.

Vice-Chairman Kangas announced that two letters have been received regarding this property and the previous meeting. They are on file if anyone wishes to review them.

Jon Adams, Esq., Corbally, Gartland, and Rappleyea, presented to the Board. He advised that he had a written summary of the remarks he was planning to make and presented them to the Board. He presented a copy of a letter from Chief John Lucariello, Rombout Fire District. He submitted copies of three deeds obtained from the Dutchess County Clerks office and an aerial photograph obtained from the Dutchess County Department of Property Services.

Mr. Adams stated that he wanted to present a copy of the tax map but deferred to the site plan presented by the engineer stating that it had an accurate tax parcel map on it.

Mr. Adams stated that he submitted the deeds for one purpose. He stated that it may be an amendment to the application. It is a request for an interpretation. The lot was created in 1952 and the three deeds presented show the chain of titles to the present time. The issue of the variance request for the lot area, this lot, under the language of the Zoning Law, citing the first page, second paragraph of the written summary, regarding lots created prior to the effected date of the Zoning Law are deemed legal non-conforming lots. It is his belief that given the language that the lot being a non-conforming lot, does not require a variance.

Mr. Adams advised that this is not a normal variance application. The difference with this lot is that it lies within a floodplain. Under the Zoning Law, lands that are subject to flooding, are not counted as real land, although it is actual land. This changes all of the dimensional requirements. The Zoning Law in contexts with properties within the floodplain incorporates by reference the Town's separate Flood Protection Law. The law states that if a house can be built above the floodplain, it is a legal house. He argument is that if the law states that a legal house can be built and an applicant otherwise meets the bulk regulation of the Zoning Law, lot size and setbacks, you can't take away what the Zoning Law by right has already given him, the right to build a house.

Mr. Adams proceeded with the five standards for consideration of an area variance, to offer their opinion that they can satisfy the standards and as a result, the area variance should be granted.

First – Will the character of the neighborhood be impaired by the granting of the variance? The character of the neighborhood is established by the existing homes. Most of the homes were built prior to the Zoning Law became effective. Most were built in the

1940's and 1950's and may be within the floodplain. Moreover, they were probably built below the floodplain. The Applicant's proposed home will not change the character of the neighborhood. They will mitigate the circumstances that were recognized in the 1980's when the Town adopted the Flood Protection Laws by building a house in conformance with the higher standards required by the laws.

Second – Is there an alternative by which the Applicant can achieve what he wants, which is to build a new home, which can be obtained without a variance. The answer is no. The lot is entirely within the floodplain. The Applicant has no alternative other than to request a variance.

Third – Whether or not the variance is substantial. If one uses a raw numerical analysis, this is a substantial variance. The commentators of the Zoning Law state that when you look at this standard, whether this variance is substantial, you shouldn't look at raw numerical numbers. What is the impact. If there is a large impact, then the variance is substantial. Here there is no impact. This will be a single-family house, just like every other single-family house in the neighborhood. If this site were entirely dry, all of the bulk regulation of the Zoning Law would be satisfied. This house will not be placed in a manor that would be any different from what the zoning calls for except for the fact that they are in the floodplain.

Fourth – Whether or not there will be any adverse environmental impact associated with the granting of the variance. Mr. Adams stated that it is self-evident. There is none. They are building a house at a higher elevation and the engineer will supplement his comments with a few more regarding this issue. They are building a house in an area that has previously been disturbed. They are not disturbing any protected habitats.

Mr. Adams stated lastly regarding the hardship being self-created, that this is an optional standard that not normally applied by Zoning Boards. Aside from the fact that the floodplain creates the hardship, the Applicant did not go in blindly and purchase this property. He did exercise due diligence, and made inquiries of the local Zoning Administrator. Mr. Adams stated that if the Board wants to question his client regarding it, they are here and prepared to address it.

Mr. Adams advised in summary that they believe they have satisfied all of the standards required for an area variance. He wanted to emphasize in considering these variance standards, you must look at Chapter 78 of the Town Code, which is the Flood Protection Code in addition to Chapter 150, because Chapter 150, which is the Zoning Law incorporates by reference Chapter 78. He reiterated that Chapter 78 states that he can build a house as long as the character of the neighborhood will not be impaired. There will be no substantial impacts, since they are building in accordance with the character of the neighborhood.

Mr. Adams addressed the issue regarding the water on the town road. It is his understanding that there was a discussion at the previous meeting regarding access in an extreme situation, such as the rain last October. Mr. Adams advised that they have submitted a letter from the fire department stating that this lot will be serviced under circumstances. He stated that the lot is on a town highway. Once on a town highway under section 280.A of the town law, they are entitled to a building permit. While there may be extreme situations, periodic flooding, the extreme shouldn't be the standard by which the variance is considered. It should be considered by what happens on a typical day. There may be a problem, but it's highly speculative. Last October we had a 100-year storm. By all reckoning, we should have another 100 years to go. He stated that he knows that it is not correct in a practical matter, but never the less, he suggested when considering a variance you have lesser standards, the extreme shouldn't be the standard by which you are guided.

Mr. Adams concluded his remarks and turned the presentation over to Mitch Berkey from Povall engineering.

Mr. Berkey stated that after the last meeting, he spoke with a few people from the audience and he felt that he hadn't elaborated enough on the "island" that everyone is talking about. Inherently, the lot will have to be built up for two reasons. One is for the floodplain requirements and the other for the septic. To determine the septic requirement, test holes must be dug to determine rocks and ground water elevations. One must maintain a vertical separation from both of them. In regards to this lot, they have ground water, so there is a requirement of three to four feet of fill and likewise to bring the lot to meet the floodplain requirements.

Mr. Berkey concluded that there is approximately two to four feet of fill required and shown for this lot. It will not be a big mountain being brought in.

Vice-Chairman Kangas asked for verification that all of the test have been done. Mr. Berkey confirmed that they have. He stated that he can issue a letter regarding it. Vice-Chairman Kangas requested that letter.

Mr. Berkey stated that at the last meeting, John Andrews commented that Lee Felshin from the Health Department advised that the lot was approvable pending the ZBA's decision.

Janis Anderson asked for verification if Mr. Berkey was stating that the lot was approved. Mr. Berkey stated that it had not and will not until the ZBA makes its decision.

Ron Critelli commented that he believed Mr. Andrews felt that the lot would be approved.

Mr. Berkey reiterated that the conception of the "island" was more than it is. It will only be two to four feet of fill. Vice-Chairman Kangas stated that she imagined it to be a moat and the owner having to wade through it.

Vice-Chairman Kangas stated that she is concerned about comment Mr. Adams made regarding the character of the neighborhood being impaired by granting this variance and the other houses that were built. She stated that sitting here in 2006; she would like to improve the zoning laws. Each year the town moves onward and upward regarding planning board and zoning laws. She stated that just because other homes have been built doesn't make it right to grant the variances for this if it is wrongful or if it will impair the neighborhood. She stated that she is concerned about the neighbors and what will happen to their land. She is also concerned about the Applicant, being a young man and wanting real estate. Was he fully aware of what he was getting into when he bought their piece of property?

Marc Breimer addressed the Board and Floor. He stated that his comments in no way reflect the official decision or concerns of the Rombout Fire District. He speaks as a citizen and a volunteer fire fighter for the last fourteen years. He stated that the plan as it has been presented and the septic system being approvable, satisfies the fire department's present code.

Vice-Chairman Kangas stated that the ZBA is here not only to protect the neighbors and the town, but also the Applicant. She is not sure if she would want to pass something which may not be good in the long run. The Vice-Chairman verified that her comment is not positive or negative. She just wants as much information as possible because this is not your everyday variance. It is something that will be costly to him and if it doesn't work out or some codes aren't met, he will spend a lot of money. Mr. Adams stated that it was his risk to make. Vice-Chairman Kangas also questioned if it will hurt the neighbors.

Marc Breimer added that according to a twenty five year old floodplain study, the house meets our requirements. He isn't sure if the ZBA can impose the question of potential future issues. When considering this house, the ZBA must consider the facts. The ZBA gets presented with evidence of the increase flooding along the Fishkill Creek. Unfortunately, the resources that the ZBA currently has are the FEMA floodplain and the insurance maps. They show that what is being done is acceptable. Granted, we may find from practical experience that the twenty-five year old data is no longer acceptable. That is a matter for the Town to bring up.

Vice-Chairman Kangas called for additional comments for questions.

Ron Critelli asked Mitch Berkey how much fill he was bringing in. Mr. Berkey advised that he did not know the exact amount but he would do a rough calculation of how much. Mr. Critelli asked if a particular type of fill was required to avoid being washed away. Mr. Berkey stated that the Health Department requires a type of fill. It will be a sandy gravel mixture with the typical fill pads and a clay berm. It will be built to standards.

Janis Anderson asked Jon Adams if he was looking for an interpretation that the lot is prior non-conforming. Mr. Adams confirmed it and referred back to the second paragraph of the first page of his summary. He cited section 50-21 of the Zoning Law and referenced section 150-111 which states, “any lot created prior to zoning shall be deemed a conforming lot”. It is his belief that a conforming lot means that it conforms with the bulk standards. In this case, the minimum lot size irrespective of any other factor that may state that it is not a conforming lot. It is conforming because of the age of the lot. It is possible that one of the two variances requested is moot because of that section. That is a request for interpretation to the extent that he is amending the application. Mr. Adams stated that he is aware that no decision will be made at this meeting. He asked permission to amend the application. He stated that he could marshal all of the relevant arguments to this application. Janis Anderson asked for verification that he was referring to the ten percent of the lot size. Mr. Adams confirmed this, not the setback issue.

Ms. Anderson commented that at the last meeting there was a question regarding the percentage calculation. Mitch Berkey stated that he reviewed this with John Andrews and there is no percentage calculation necessary for this variance. It is the square footage. The Applicant has approximately 11,000 sq ft and they need 36,000 sq ft. Mr. Berkey commented that even though the code isn’t written that way, it is how it is done. Ms. Anderson stated that it is how it is written and she wanted to make sure that everybody was on the same page. Mr. Berkey agreed and reiterated that the Applicant needs 36,000 sq ft and is approximately 25,000 sq ft short.

Ms. Anderson asked if there is a way to bring in enough fill to avoid the variance. Mr. Adams stated that it was feasible, but would entail bringing the entire two acres above the floodplain. Mr. Berkey advised that there is also a state wetland which adjoins the creek and the Town has its own restrictions regarding filling up to the creek. There would be other implications. Ms. Anderson commented that it might not be an alternative. Mr. Berkey agreed and stated that it would be cost prohibited and would not sit well with the State DEC. Mr. Adams stated that it may exasperate the flooding elsewhere.

Ms. Anderson asked Jon Adams his concern regarding sections 78 and 150, in 78 there is a provision that if there are provisions in the Town Code that are more restrictive, they should apply. Having 78 obviate the ability of 150 to have the authority. Mr. Adams responded that if 78 states that you can build a house if you can bring it up to a higher elevation, there is nothing in the Zoning Law that talks about the elevation above the floodplain. That is the only standard regarding the interchange between the two. He didn’t see anything in the Zoning Law that is more restrictive. Ms. Anderson corrected him and stated that it states that one must have a certain amount of the property above the water. Mr. Adams argued that you have to read everything together. You can’t say the 78 does not apply because 150 is more restrictive. It is applicable because 78 is incorporated by reference in the Zoning Law. He stated that if he understands Ms. Anderson’s remark correctly, she would make academic or ignore 78. Ms. Anderson replied that she would read them together. You have to read 78 and you have to have a certain percentage of the lot not under water.

Mitch Berkey, answering Ron Critelli's earlier question regarding the amount of fill, calculated that it would be approximately 1,200 to 1,300 yards. Mr. Critelli stated that he is not a civil engineer and not an expert in that field. Mr. Berkey stated that it is predicated by the Health Department, but when you run a bank gravel for a fill pad, that stuff is prone to wash away. What you have to do is build a clay berm which goes around the entire outside. You then put top soil on it and then seed it.

Mr. Critelli asked when they go to the Board of Health to get the final approval for the septic, they will know exactly what you are putting in. Mr. Berkey confirmed this and stated that it is shown on the plan as well.

Vice-Chairman Kangas opened up the discussion to the Floor.

Frank Russo, Hopewell Jct, commented on the Applicant's plan to put clay fill in. Clay does not allow water to drain down. He stated that he has spoken with Mr. Scanga approximately a month ago. Prior to that, he had never seen either of them. He stated that when Mr. Scanga spoke with the neighbors, he did not speak with him and he is the immediate neighbor. Mr. Russo stated that although Mr. Scanga is entitled to build a house, if he does, he will dump water on his side. He just finished cleaning up his house from the last flood. The only way he sees to avoid the excess water is to construct a 450-foot long, 6-foot high concrete wall. That would take away from him buying a house next to a stream.

Mr. Russo, directing his remark to Mitch Berkey, stated that even though he spoke to some residents, nobody had been to his side. Vice-Chairman Kangas specified that all comments should be directed to her. Mr. Russo apologized and stated that the engineer commented that he had spoken with several members of the audience, that there are only two here, and he is one of them and he has never seen him before.

Mr. Russo asked if this does adversely affect his property, does this Board take responsibility. Both the Vice-Chairman and Janis Anderson shook their heads no. Mr. Russo asked who then will take the responsibility. Ms. Anderson stated that it is something that he would have to discuss with his lawyer.

Mr. Russo commented on the Rombout Fire Company. He stated that he has had four floods since he purchased his home in 1998. They have been their once, ten hours late, and he has four small children. Three firefighters show up without even life preservers for themselves. Vice-Chairman Kangas asked for verification that is was when he was under water. Mr. Russo confirmed that he had three feet and the water had begun to recede. Vice-Chairman Kangas asked how many hours he had waited. Mr. Russo stated that they couldn't leave their property at 2:00pm and they showed up at 1:00am. He stated that they were ok because he owns three boats and had them tied to the stairs. When the water comes in, it comes in quickly. He knows the stream very well and doesn't think anybody had done a study on it. He knows it better since October regarding how much rain and for how long and the rise of the stream.

Mr. Russo stated that he likes the area, which is the reason he won't leave. It is a beautiful area to live and he wouldn't even move to the upper area of the road. He knows that he lives in a flood area. It floods regardless of what you do with it. It isn't a 100 year. That is something that the insurance companies or FEMA created. He reiterated that he has been flooded four times.

Mr. Russo stated that any elevation on this lot will adversely affect him and he will have to taken measures to prevent it. He stated that he will have to put up a wall. Mr. Russo commented that he had twenty yards of Item Four gravel on his property and ten yards of it was washed away in October. He advised that the fill will need to more than just gravel.

Mr. Russo commented that the septic is not an issue with him. If it overflows it will flow downstream and not towards his property. His concern is the displaced water. He normally gets three feet of water, which will come no matter what you do. He doesn't want six feet of water. He stated that his home is elevated seven feet, but he still sustained \$20,000 in damages.

Vice-Chairman Kangas asked for verification that he isn't stating that he will get an additional three feet of water if a house was built, but that he is just concerned of what might happen. Mr. Russo confirmed this, although he feels certain that if there is fill on this lot, that the runoff will double. He advised that he is taking measures to protect his property.

John Hupe asked for verification that one of the letters received was his. Vice-Chairman Kangas confirmed that it was. He advised that one of the statements made at the last meeting was that there would not be any impact on the neighboring homes. That information is unsubstantiated. He doesn't know how that statement can be made without seeing the results of the impact with fill on the property. He stated that after the last flood the water came within a foot of his well. The flooding has become worse, and a point had been made at the last meeting that the development happening along the creek is exasperating the problem. Another statement made at this meeting was that there would be no adverse environmental impact. That is also unsubstantiated. This is not in a normal floodplain. This is actually water that floods over the bank of the creek and there is a current associated with it. The current comes from two different directions, which may be evident in a few of the pictures that he left. The current flows directly in the path of the fill section of the septic field. Mr. Hupe stated that his concern, although unsubstantiated, is the potential erosion of the septic system, which is raised and then the environmental impact downstream, including his property and the neighbors.

Mr. Hupe reiterated that a statement was made that the Applicant did his due diligence. With respect to Mr. Scanga, Mr. Hupe advised that he made a poor investment. He spoke with the Applicant and advised him that the lot does go completely underwater. Raising the fill section to build a house is one thing, but the Board did raise the issue of a "moat". That brings up questions of access to the property. These are concerns for somebody just starting out. Mr. Hupe stated that, without advising how the Board should vote, from the

perspective of the Town, to approve something like this would not be in the best interest of the Applicant. The amount of money that will be spent trying to make this property buildable may be better spent building a house in a more suitable location. This is a great neighborhood, but you have to deal with these issues. He stated that unfortunately for those that have pre-existing homes, they have seen the flooding become worse year to year. We can't control what is being developed in other municipalities that impact Fishkill, the only thing that he can ask is that the Town of Fishkill not add to the problem.

Jon Adams responded to Mr. Hupe's concerns. He stated that the issue of drainage has been addressed. It is a non-issue. Under New York Law, property owners have the right to reasonable development of their property. If some water runs off, it is legal, so long as it hasn't been channeled. They have no plans to channel or divert water from the property with the exception of any water that is associated with the slopes on the property. He stated that Mr. Berkey will speak again if necessary regarding the fact that there will be no drainage impact associated with this construction. In regards to the septic system, he did not hear any engineering opinions concerning the erosion of it.

Mitch Berkey stated in regards to the septic system being studied and substantiated, it has been submitted to the Town Engineer. He did his review and the ZBA received a copy of the review letter. The Town Engineer did not raise any concerns regarding drainage issues. Mr. Berkey stated that they are in compliance with the flood development code. They will not filling any part of the floodway, they are only filling in the 100-year floodplain. The fill pad is being designed in accordance with the Health Department's requirements. They require a sand and gravel mix with a clay liner surrounding it. Mr. Berkey reiterated that they will not channel the drainage. It will come off of the fill pad and flow down to the creek. He wouldn't speak for the Town Engineer, but speaking for himself, he stressed that the negative impact to the floodplain will be immeasurable. There will be only 1,200 yards of fill being placed on this lot.

Jeanne Krause, Mountainview Rd, stated that as one ZBA Member mentioned, the FEMA data is twenty-five years old and there has been quite a bit of building upstream since then. That is like taking twenty-five year old chemotherapy because nobody has done the due diligence to see what has changed. Her question to Mr. Berkey was how his calculation was based regarding the displaced water. If you raise three feet, the water must flow in a particular manner. Knowing the basic flow of the water, if you raise it three feet, the water can no longer breach the area, that is the purpose of the mound, to keep the house safe. If it cannot breach the three-foot mound, then it must be channeled around the mound. It is indeed channeling around both sides of the house and will be channeled with the normal flow of the stream. How it can be said that it is not displacement is questionable. Ms. Krause stated that she would like to know what the updated studies show, because it has changed and what is the calculation of the water displacement.

Mitch Berkey stated that the best way he can explain it is that although he stated that is was immeasurable, it will displace water. There is no question about that, but if you measure the cubic yardage of the floodplain through East Fishkill and Fishkill, there will

be millions of cubic yards, and by putting and displacing 1,200 to 1,300 yards in that, it would displace the elevation of the floodplain. He reiterated that the Board can go back to the testimony of the Town Engineer.

Vice-Chairman Kangas stated that she would like to visit the property. Other Board Members agreed. The Vice-Chairman advised the Floor that the ZBA has made several site visits and it usually makes a difference to her when she sees something. Janis Anderson asked if the Vice-Chairman would want someone like the Town Engineer to be present. Vice-Chairman Kangas declined. She stated that she wanted to set the date for the weekend, if that is the only time that a majority can meet. She set a time for 10:00am, Saturday, February 25, 2006. Janis Anderson asked if the property was marked so that the members will be able to find it. Mitch Berkey stated that they will see the bridge and to stop at the bridge that crosses the creek. The lot will be on the left.

Jon Adams asked if there will be any discussion at the site. Vice-Chairman Kangas stated that there would not. She advised that they have done many site inspections, and it is part of what the ZBA is allowed to do.

John Hupe asked if the ZBA Members are allowed to speak with each other. The Vice-Chairman stated that they do not. They will visit the site and leave.

Julia Scanga stated that she wanted to reiterate some of the things that had been said. The Vice-Chairman interrupted her and advised only information that is different. Ms. Scanga presented a picture of the cottage on the property. She stated that the lot is referred to as vacant land. It isn't vacant. There is a cottage and her son would like to live there. He can live there, but she would like for him to have a safer home. While the neighbors have the right to voice their opinions, she asked that the ZBA Members listen to the professionals. The professionals stated that it meets the requirements and they have been through all of the paperwork. She stated that she had stressed to the engineers that the neighbors would not be impacted. It had been explained to her that the amount of fill that is being brought in is like a grain of sand in the ocean or an ice cube in a bathtub. The floodplain is so vast. It is not just this property and the amount of fill that is being brought in to make it more habitable is just a grain of sand in the ocean. Ms. Scanga commented on the statement that Mr. Russo made. She stated that his house is on the other side of the creek. It is a lower elevation and it is the law of nature that the lower elevations flood first. As the water rises, whatever fill they bring in, their property is higher, so by the time it backs up to his property, it is already flooded. She stated that Mr. Hupe's elevation is the same if not a little bit higher than theirs, so the water will go to their property before it goes to the Hupes, so the water displacement is minimum.

Ms. Scanga advised the Board that the neighbors that are the most vocal weren't interested in the property. Vice-Chairman Kangas interrupted Ms. Scanga and reminded her that they are before the Board for a variance and the ZBA is not interested in anything that may have gone on between the neighbors. Ms. Scanga argued that a neighbor spoke of her son not making a wise investment, but he bought what he could afford. He can live there, but if things can be made easier for him, she would like the Board to consider it.

She again asked the Board to consider the expert opinions rather than the unfounded opinions of the neighbors, which may be motivated by other factors.

Janis Anderson advised that the Board can close the Public Hearing. She advised that with the sixty-two day ruling to vote, the Board actually has two meetings before the sixty-two day limit. This may be placed on the agenda to discuss and if the Board has any questions for the Applicant, they may be asked.

Vice-Chairman Kangas called for a motion to Close this Public Hearing.

Marc Breimer made the motion to Close the Public Hearing

Ronald Critelli seconded

Motion Carried

Maureen Kangas – Aye

Ronald Critelli – Aye

Lynne Raver – Aye

Marc Breimer – Aye

The Vice-Chairman called for any new business. Janis Anderson stated that at the beginning of this meeting, the Vice-Chairman called for a motion to accept the minutes of the November Meeting. The minutes for the January 10, 2006 meeting need to be approved.

Vice-Chairman Kangas called for a motion to accept the minutes from the January Meeting.

Ronald Critelli made the motion to accept the minutes as written from the January 10, 2006 meeting.

Lynne Raver seconded.

Motion Carried

Maureen Kangas – Aye

Ronald Critelli – Aye

Lynne Raver – Aye

Marc Breimer – Aye

Deliberations

ZB05-010, Melzingah Dam Rd

No deliberations

ZB05-020, 115 Mountainview Rd

Vice-Chairman Kangas stated that she was very concerned with the flooding on the property. She is concerned that the displacement of the water could impede the neighbors' property. Marc Breimer agreed with her. The Vice-Chairman stated that there is a fine line and that it could happen.

Marc Breimer stated that his concern is that, while the conclusions of the Town Engineer, and the conclusions of the analysis of the floodplain may have been valid twenty years ago, just as the analysis of the levy system in New Orleans might have been valid ten years ago, it is not an indication of the present conditions.

Janis Anderson asked if John Andrews had been asked that question at the last meeting. Ronald Critelli stated that minutes reflected that his statement was that the studies had not been updated. Vice-Chairman Kangas asked Janis if the Board members were allowed to discuss this with Mr. Andrews' directly. Ms. Anderson confirmed that they could.

The Vice-Chairman stated that there was too much that was not setting right with this. It is not cut and dry.

Marc Breimer stated that this issue goes beyond this property. What it is coming down to is that there has been so much development within the creek system, that is may be time that the Town reconsiders this and begins to apply pressure. The Vice-Chairman stated that the Town needs to take a serious look at it. Mr. Breimer feels that the Scanga's should not suffer for the fact that nothing has been done yet.

Vice-Chairman Kangas stated that for someone to purchase a piece of property like this, they should be more in tune than "it fits within my budget". You need to look at the long run of it.

Lynne Raver stated that they did know and they were willing to buy it.

Marc Breimer stated that if an insurance company will insure it and the property owner is willing to accept natural losses of an event and the potential affects on the neighbors, it needs approving.

The Vice-Chairman stated that she is concerned that the Applicant will be paying for this the rest of his life. Janis Anderson stated that it is his problem. The Vice-Chairman agreed and continued with that she is also concerned with what the neighbors will have to contend with. Marc Breimer agreed.

Ronald Critelli stated that what will happen is that it will have to be submitted what the neighbors will have to contend with and they will have to get an engineer to do that. For the ZBA, they will have to deal with what Mr. Andrews' said and deal with the facts.

Janis Anderson commented on Jon Adams' remark that it is a prior non-conforming lot. She stated that it is her belief that the argument is not legitimate. The Board Members agreed. Marc Breimer asked if he is correct in his thinking that if someone built a structure in the middle of a pond, prior to zoning, that one could theoretically still build in that pond when the zoning states that you can no longer build in there. It brings up several practical questions. By stating that it is an existing non-conforming lot, one can also state that all of the property under the creek is also existing non-conforming lots. This can go back to the FEMA studies. It brings up the question of when is a lot no longer a lot because it is under water. Something could happen. What if one of the dams upstream breaks and some of the lower properties are permanently under water. Technically speaking, and not looking in depth at the code or law, they are pre-existing lots. Can someone continually build on something that is permanently under water?

Janis Anderson asked the Board if they understood the size of the variance. Vice-Chairman Kangas stated that it was large. Ms. Anderson stated that it is several times the amount they are allowed. The Applicant needs 36,000 sq. ft. of dry land and they only have 11,000 sq. ft. The Vice-Chairman reiterated that she finds that a large percentage.

Ms. Anderson stated that she was going to look up the case that was cited and have it for the Board for the next meeting. In regards to the self-creation of the difficulty, she stated that there may be significant issues with it. She doesn't believe that the Building Inspector would just tell them that they could build on it. The Board does not know what the Building Inspector said.

Ed Peters commented that he does not believe that George (McGann) would tell them they could build on it. He would have advised them to go through all of the proper channels and go to the ZBA.

Vice-Chairman Kangas stated that there is a lot of he-said-she-said, which cannot be documented. Marc Breimer agreed.

Vice-Chairman Kangas called for a motion to Adjourn the ZBA Meeting.

Marc Breimer made the motion to Adjourn the ZBA Meeting

Ronald Critelli seconded

Motion Carried

Meeting Adjourned at 8:17 pm

Respectfully submitted
Nancy Fitzgerald-Lecker
ZBA Clerk